

## Message Text

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ACTION EUR-12

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TAGS: ENRG, PGOV, SENV, WB  
SUBJECT: MORE COURT DECISIONS ON ELECTRIC POWER PROJECT

REF: 1976 USBERLIN 2635

1. SUMMARY: TWO MORE ADVERSE COURT DECISIONS HAVE FURTHER DAMPENED  
SENAT HOPES OF GOING AHEAD ON SCHEDULE WITH PROPOSED 600-MEGAWATT  
THERMAL POWER PLANT FOR BERLIN. JUDGES ESTIMATE THAT CITY'S  
POWER SUPPLY SITUATION WILL NOT BE ACUTE BY 1980/81. END SUMMARY.

2. TWO MORE CHAPTERS HAVE BEEN WRITTEN IN THE DEVELOPING JUDICIAL  
SAGA OF BERLIN'S NEXT POWER PLANT. ON DECEMBER 14, THE 13TH  
CHAMBER OF THE BERLIN ADMINISTRATIVE COURT ISSUED A TEMPORARY  
ORDER RESTRAINING  
THE SENAT/POWER COMPANY (BEWAG) FROM CUTTING TREES ON THE SITE OF  
THE PROPOSED POWER PLANT UNTIL BEWAG HAS SUCCESSFULLY GONE THROUGH  
PROCEDURES REQUIRED BY THE CONSTRUCTION LAW, INCLUDING APPROVAL  
OF A DETAILED PLAN. SENAT HAD PREVIOUSLY HOPED TO BYPASS THIS  
PROCEDURE IN THE PUBLIC INTEREST BECAUSE OF TIME PRESSURE WHICH  
HAS DEVELOPED. COURT'S ACTION PARALLELS THAT OF FIRST

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CHAMBER DECEMBER 6 (REFTEL) WHICH PROHIBITED CUTTING TREES  
PENDING FULL COMPLIANCE WITH FEDERAL LAW ON PROTECTION AGAINST  
NUISANCES. THIS CURIOUS DUAL ACTION AROSE BECAUSE ONE GROUP OF  
CITIZEN OPPONENTS FILED SUIT WITH CHAMBER (FIRST) WHICH DEALS  
WITH ENVIRONMENTAL MATTERS AND ANOTHER FILED WITH CHAMBER  
(THIRTEENTH) WHICH HANDLES CONSTRUCTION QUESTIONS. DOCUMENTATION

PRESENTED TO 13TH CHAMBER SHOWED THAT CONSTRUCTION OF ADDITIONAL GENERATING CAPACITY AT SPANDAU HAS BEEN STUDY AND DISCUSSION FOR ABOUT TEN YEARS, AND THAT AT ONE POINT IT WAS CONSIDERED NECESSARY THAT CONSTRUCTION START IN 1975. COURT CRITICIZED SENAT/BEWAG FOR HANDLING OF MATTER, CAST DOUBT ON NEED FOR MORE POWER BY 1980, AND WARNED SENAT/BEWAG NOT TO CREAT AN ATMOSPHERE OF CATASTROPHE AMONG PUBLIC ON POWER ISSUE.

3. BACK AT THE FIRST CHAMBER, AN ORAL HEARING WAS HELD DECEMBER 15 TO RECONSIDER DECEMBER 6 TEMPORARY RESTRAINING ORDER WHICH HAD BEEN BASED ON WRITTEN SUBMISSIONS ONLY. RESULT WAS CONFIRMATION OF EARLIER ORDER AND THIRD DEFEAT IN TEN DAYS FOR SENAT/BEWAG. THIS COURT ALSO PRONOUNCED THAT NEED FOR POWER IN 1980/81 WOULD NOT BE SO URGENT THAT SHORTCUTS SHOULD BE TAKEN NOW WITH LEGAL AND BUREAUCRATIC PROCEDURES. SENAT HAS ANNOUNCED IT WILL APPEAL DECISIONS OF BOTH COURTS TO SUPERIOR ADMINISTRATIVE COURT.

4. COMMENT: AS MATTER NOW STANDS, IT APPEARS THE POWER PLANT PROJECT WILL BE DELAYED AT LEAST ONE YEAR, POSSIBLY MUCH LONGER. THE VARIOUS ELEMENTS INVOLVED WITH THE PROBLEM - THE MAYOR, SEVERAL SENAT DEPARTMENTS, POLITICAL PARTIES, SPANDAU DISTRICT OFFICIALS, AND BEWAG (IN WHICH SENAT HOLDS MAJORITY OWNERSHIP)-- ARE CURRENTLY ENGAGED IN LAYING AND DODGING BLAME FOR STATE IN WHICH POWER PROJECT FINDS ITSELF. FULL STORY HAS NOT BEEN PUBLICLY AIRED AS TO WHY SO MUCH TIME PASSED BEFORE NECESSARY STEPS WERE TAKEN. THIS MAY WELL HAVE BEEN DUE TO THE WAIT FROM 1974 TO 1976 FOR DECISIONS ON THE PROPOSED KALININGRAD PROJECT, A SOURCE OF ELECTRICITY WHICH MIGHT HAVE POSTPONED THE NEED FOR A PLANT BY SEVERAL YEARS. GEORGE  
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